

THE
Royal Apology:
OR, AN
ANSWER
TO THE
Rebels Plea: U* 5. 170

WHEREIN,
The most Noted *Anti-Monarchical*
T E N E N T S,

First, Published by DOLEMAN the *Jesuite*, to promote a Bill of EXCLUSION against *King JAMES*.

Secondly, Practised by BRADSHAW and the Regicides in the actual Murder of *King CHARLES* the 1st.

Thirdly, Republished by SIDNEY and the *Associators* to Depose and Murder his Present *MAJESTY*,
Are distinctly consider'd.

With a PARALLEL between
DOLEMAN, BRADSHAW, SIDNEY
and other of the *True-Protestant* PARTY.

L O N D O N,

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sold by Randolph Taylor, near Stationers-Hall, 1684.

07.82

T O T H E
R E A D E R.

IN the Year 1594. the Jesuit PARSONS published a *Conference* under the Name of DOLEMAYN. The Design of which *Pamphlet*, as every one knows, was to promote a *Bill of Exclusion* against King JAMES.

And though the Jesuites malice was herein defeated, as to the Person of that *King*; yet how much it influenc'd the Sufferings of his late *Majesty*, is a sad story to repeat. For he who shall peruse the many virulent *Libels*, which first occasion'd, and then fomented that

To the Reader.

unnatural *Rebellion* ; he will easily be instructed how that *Conference* was Transcribed and Transposed by the *Patrons* of the *Faction* : And to speak in our Modern Language , he cannot but observe, That the *Popish DOLEMAN* is the Oracle of the *TRUE-PROTESTANT* Party.

Now that this may not be rejected as a slandering Design, only to make them odious to Authority , as is commonly Objected ; I have here drawn for the Readers satisfaction, a short *P A R A L L E L* between *Doleman*, *Bradshaw*, *Sidney* and some others. Upon perusal of which it will plainly appear , that the
Jesuites

To the Reader.

Jesuites Principles, as managed by *Bradshaw* and the *Regicides*, did cut off the Head of King CHARLES the first.

And since the same Principles have been transcribed by the *Brethren* of the ASSOCIATION; we have just reason to suspect the same *Practices* likewise: And that those who defend the Murder of King CHARLES the first, would doubtless, if they had Power in their Hands, Depose and Murder King CHARLES the Second.

If any *Republican* shall think fit to doubt that the following Discourse is either *Partial* or *Unconcluding*, i.e. that I have either said something that is *false*, or else have omitted in any Instance, the
ve-

To the Reader.

every *Strength* of their *Cause*, let
him make known his Grievance.
And I do here faithfully promise,
upon such notice given, I will
(through Divine Assistance) en-
deavour his Satisfaction.

THE

THE
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T H E

T H E
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O R, A N
A N S W E R
T O T H E
Rebels P L E A.

Although the *Kings* Title to his
Crown and Dignity, together with
his just Right and Authority, over
all Persons and in all Causes, are beyond Ex-
ception establish'd, by the Ordinance of
God, and the known Laws and Constitu-
tions of these Kingdoms; yet so far hath
Prejudice, or something worse, prevail'd
with some Men (and thole not of the mea-
nest Rank) as to suffer themselves to be led
into a Belief.

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B

That

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That the Original of all Government is from the People; and that the Power which Kings and Princes have, was derived unto them from the People by way of Pact or Contract. Particularly, That the King of England (as appears from his Coronation-Oath) having solemnly engaged to his People, to maintain Religion, to execute Justice, and to keep the Laws and rightful Customs of the Kingdom; upon these Conditions was admitted to the Kingly Power. The which Conditions if he shall omit to observe (and of this they themselves will be Judges) they then fancy, that he hath forfeited his Crown; and that the People who first made him King may, by their Representatives in Parliament, dethrone and Depose him.

That this is the Scheme of some Mens Policy, the many Treasonable Papers, such as, *The Association, Vox Populi, Appeal to the City, Coll. SIDNEY'S Papers, &c.* together with the late horrid Conspiracy grounded thereupon, do sufficiently demonstrate.

And therefore I hope it will be no unreasonable Undertaking; but may, through
Gods

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Gods Blessing, contribute somewhat to secure the King's *Liege-People* in their due Obedience, whilst I endeavour to evince the Falseness and destructive Consequences of these *Anti-monarchical Principles*.

Which that I may the more effectually, and with the greater clearness perform, I shall first lay down the utmost Strength of their Cause in one intire *Objection*, and then endeavour their satisfaction in the following *Answer*.

O B J E C T I O N.

THE Government of England is a mixt Monarchy, consisting of *Three Estates* King, Lords and Commons: And therefore the King of England is not an *Absolute*, but a limited Monarch; and as Such is to govern by, and according to, the *Laws of the Land*, and not otherwise: And by the Oath which he hath taken at his Coronation, he is obliged to use the Power, Trust and Office then committed to him, for the Good and Benefit of the People, and for the preservation of their Rights and Liberties.

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Now if the King, thus entrusted to keep the Laws, and preserve Religion, should be guilty of a wicked Design, to subvert our Laws, and destroy our Religion, by introducing an arbitrary, Tyrannical Government; he must then understand, that he is but an Officer of Trust: And the Parliament of England (the Representatives of the People, in whom all Power doth originally reside) they are to take order for the Animadversion and Punishment of such an offending Governor. Parliaments were ordain'd to restrain the exorbitant Power of Kings, and to redress the Grievances of the People.

It is very true, what some have said, *Rex non habet parem in Regno*. But this is to be understood in a limited Sense: For though major singulis, yet he is minor universis. This we know to be Law, from that famous Lawyer BRACTON: *Rex habet Superiorem, Deum & Legem, etiam & Curiam*.

Which is thus Interpreted by Mr. SIDNEY.

For this Reason Bracton saith; That the King hath Three Superiors, to wit, Deum, Legem & Parlamentum; That is, The Power originally in the People of England, is delegated unto the Parliament. SIDNEY'S Tryal, pag. 23. This

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This is, as I conceive, the *Sum* of all that *hath* been, and the utmost of what, I suppose, *can* be said in this matter. To which I return this

A N S W E R.

THAT this Phrase a *mixt Monarchy*, though somewhat frequent in the Mouths of these Men, is yet no very plain or intelligible Expression.

For, if by a *mixt Monarchy*, they design such a Government, wherein though the *Supream* Power may reside in one *single* Person, yet the Monarch is so limited in the Execution of that Power, that he cannot legally perform several Acts of Sovereignty without the Concurrence of his Subjects (as with us here in *England*, the King neither makes LAWS, nor doth raise Taxes without his *Parliament*) If this be the utmost they design, when they call *England* a *mixt Monarchy*; then, though the Expression is very improper (an *arrand Bull*, a flat Contradiction *in adjecto*) yet where we are agreed in the *Thing*, we shall not contend about *Words*; but may safely grant,

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grant, that in this Sense, as now explain'd, The Government of England is a mixt Monarchy.

But if by a *mixt* they denote such a Monarchy, wherein though the Style and Title of King, together with some Ceremonious Appendices of Royalty, as Cap and Knee, Guards, &c. are indeed invested in One single Person, yet the Supreme Power and Sovereignty is not solely and intirely in the Monarch, exclusively to all others (as with us here in England, say these Men, the Sovereignty by way of Coordination, is partly in the King, partly in the Lords, and partly in the Commons, and for this reason they are styled the **Three Estates** of the Kingdom) if this be their Notion of a *mixt Monarchy* (as most plainly it is, if *Actions* may interpret *Intentions*) it is then not only false and absurd, but dangerous and destructive. And therefore in this Sense we do peremptorily deny; That the Government of England is a *mixt Monarchy*.

For, The Supreme Power is solely in the King; and consequently the King is not, by way of Coordination, One of the **Three Estates**,
but

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but the HEAD and Sovereign of them all.

In order to his Conviction, the Dissenting Republican, who denies this Truth, may please to consider,

That he who shall desire to inform himself rightly, where the Supreme Power in any Government is plac'd; as also by whom, how and how far such Power hath from time to time, been either exercis'd or restrain'd; he must of necessity have recourse to the Publick Laws and Constitutions of such Government. Particularly here in England, he who designs to be truly instructed in this matter; he must not receive his notice from the Discourses of private men (which are many times fallacious, partial and uncertain) but he ought to consult the Known Laws and Statutes those Authentick Records of the Kingdom.

Now the Oath of Supremacy, establish'd by several Parliaments, doth expressly Declare; That the Kings Highness is the only Supreme Governor of this Realm, and of all other his Highness Dominions and Countries, as well in all Spiritual or Ecclesiastical Things or Causes, as Temporal.

Words.

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Words as plain and intelligible as the Wit of Man could devise.

From whence 'tis obvious to make this Inference ;

That if the King is *Supream*, then he hath no *Superior* ; if *only* *Supream*, then no *equal*. If *over all* Persons (and as such the 55th. Canon enjoyns us to acknowledg him in our Prayers) then *All* Persons in these his Realms , and all other his Dominions and Countries, are *subordinate* or *Subject* unto him , and if *subordinate* , then none of them, either *severally* or *joyntly* are *coordinate* with him.

Now is it possible , after so plain and express a Determination, for any Man to doubt ; *That the Supream Power is solely in the King* ? I observe it is possible : For, some Men who will not be satisfy'd with Reason, do thus urge.

That the Oath of *Supremacy*, being expressly levell'd against the Usurpations of the Church of Rome, was consequently so fram'd as to discover those who are *Popishly* affected.

For, the Persons taking that Oath are obliged only to Declare ; That they Re-
nounce

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nounce all Foreign Jurisdictions : i.e. They do swear ; That the King of England is no Feudatory Prince, and that he holds not his Crown in Fee, either from the Pope, or any Foreign Power whatsoever. But what is all this, say these men, to the Parliament? Or, how comes this Oath to be urg'd against the Jurisdiction of the two Houses? Since in those very Statutes in which this Oath is enjoyn'd, the Legislative Power (which doubtless is the Supreme Power) is expressly Established in the Parliament, as well as in the King, in these Words.

Be it Enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal and the Commons in this present Parliament assembled, and by the Authority of the same.

Lords Spiritual and Temporal and the Commons do Enact jointly with the King, and therefore have a Coordinate Power.

To which it is thus Reply'd.

That when this Oath of Supremacy was first framed, the Pope being then the most noted Usurper, was for that reason more particularly mention'd than any other; but from thence to infer.

That it was design'd, by way of Test,

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to

(a) *V. 27. Ed. 3. c. 1.* to discover Those, who are Popishly-affe-
3 R. 2 c. 3. fect, is a very great Mistake.

7 R. 2. c. For, the Supremacy of the Kings of
12. 16 R. England, being the chief Prerogative of the
2. c. 5. 2 H. Crown, was always challeng'd and main-
4. c. 4. 5 H. tain'd by (a) Popish Princes as well as Pro-
4. c. 1. 24 H. 8. c. 12. testant, (b) as appears by these several
25 H. 8. c. Statutes here mention'd in the *Margent.*
19. 26 H.
8. c. 1. 37 H. 8. c. 17.

Parl. 2. 1. The Intent then of this Oath was not
Mar. c. 1. to discover who are Papists, but in plain
(b) 1 Eliz. Terms, who are Traitors: And therefore
c. 1. 5 Eliz. let Mens Pretences to Religion be other-
c. 1. 13 E. wise what they will; if by scrupling this
32. c. 2. Oath, they refuse to give assurance to the
 Government, that they will be honest and
 loyal, they are to be esteem'd, if not
 Traitors, yet at least Trayterously affe-
 cted.

And whereas they further urge, That
 the Coordinate Power of the Parliament is no
 way condemn'd by this Oath; which on-
 ly takes notice of a Foreign Usurpation;
 They are for their satisfaction, desired to
 consider,

That, since *rectum est Index sui & obliqui*,
 Domestick Usurpation is hereby excluded
 as well as Foreign: The Sovereignty of
 the

the People as well as of the Pope.

And as to that which is pleaded from the Form of the Statute, *by the Authority of the same*, as if the Lords and Commons did by their Authority, make and enact Laws jointly with the King; To this I do humbly Answer, That this Expression, if duly consider'd, doth not in the least favour the Republican Fancy of a Coordinate Power.

Which I shall best express to vulgar Capacities (for whom this Discourse is chiefly design'd) thus faithfully by representing the Matter of Fact.

Although the *Legislative Power* is solely in the King, yet His Majesty doth not make Laws, without the concurring Advice and Approbation of his Subjects: For the King, like other Men, being mortal and of limited Capacity, is neither *omniscient* nor *omnipresent*. He cannot be in all Parts of his Dominions at one and the same time, and consequently can no otherwise be acquainted with the Grievances of his Subjects, but by the Reports of others.

To supply this Defect, he calls whom

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he pleaseth (such as he thinks able and faithful to assist and direct him) to be of his *Privy Council*; whose advice he takes in the Execution of those Laws which are already Establish'd.

But since all human Laws are liable to Defects (for it is the sole *Prerogative* of Gods Law, as being the result of Infinite Wisdom and Goodness, to be *exceeding broad*; to be fitted to all times, and to answer all occasions) it is therefore sometimes necessary that *new* Laws should be made, and the *old* ones either abrogated and null'd; or else reinforc'd with greater Penalties.

In such Cases, according to the happy Constitution of these *Nations*, the King summons his *Great Council*; the High and most Honourable Court of Parliament; The *Lords Spiritual*, the *Lords Temporal* and the *Commons*; Representing the *Three Estates* of the Kingdom; Who coming from all Parts of the Nation, are best able to inform His Majesty of the Grievances of his Subjects; and by what Ways and Methods they may most suitably be redress'd.

In order hereunto; when any Proposal,
or

or as we phrase it any *Bill*, hath pass'd the Approbation of the *Two Houses*; it is then humbly presented to the *King* for his *Royal Assent*. Which if His Majesty thinks fit to grant, then *Le Roy le veult*, makes it a Law: But if the King shall dislike the Bill, he then rejects it, with a *Le Roy ne veult*, the King will not pass it; or else in that more obliging Form of Denyal, *Le Roy avisera*, the King will consider or advise about it.


This is the plain matter of Fact. From whence 'tis very easie to understand, what this Form of words, *By the Authority of the same* doth import, viz. not of the *same Lords and Commons* (as if either *Lords* or *Commons* had an Authority contradistinct from, or coordinate with, the *King*) but by the Authority of the *same Parliament*.

The which *Parliament*, as Sir Edw. Cooke ^{(a) In 11. part 4. Cap. 1. r.} informs us, consisteth of *The Kings Majesty*, sitting there as in his *Royal Politick Capacity*, and of the *Three Estates of the Realm*, viz. *The Lords Spiritual*, the *Lords Temporal* and the *Commons*. So that in Propriety of Speech, neither *Lords* nor *Commons* (though in a vulgar Sense, and to some purpose,

purposes, they are sometimes so called) I say neither *Lords* nor *Commons* strictly and properly are a Parliament without the *King*; who *summoning* them by his *Writs*; and *presiding* over them as their *Head*, animates and informs them, and makes them a *Legal Parliament*, who otherwise, without the *Royal Summons*, would be no better than an unlawful and riotous Convention.

The *Lords* and *Commons* have indeed an Authority, to meet and sit and debate as a *Parliament*; But they have this Authority solely from the *King*, and not from *Themselves* or from the *People*: For, the *King* Calls them when he pleaseth, and so makes them a Parliament; and he *Dissolves* them when he thinks fit, and so makes them none.

Again, The *Lords* and *Commons* have an Authority, but not to *Enact* or make Laws (for the Words, *Be it enacted* refer only to the *King*) but to *advise* and *consent* to such Laws as shall be made by the *King*: And therefore this Phrase, *Be it enacted by the Kings most excellent Majesty, the Lords Spiritual and Temporal, and the Commons*



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in this present Parliament assembled, &c. hath an *Ellipsis* in it; and is to be read thus. Be it enacted by the Kings most Excellent Majesty, by the *Advice* and with the *Consent* of the Lords Spiritual and Temporal and the Commons in this Parliament assembled, &c. *Advice* and *Consent* though for Brevities sake they are not always express'd, yet are still to be understood.

And for the Truth of this, I appeal to the *Form* of our *antient* Statutes (as also to some modern ones) and that not only in the *Title*, but also in the *Preface* and *Sanction* of them. For till the time of *Henry VIII.* the words *Advice*, *Assent* or *Consent* were never omitted. As appears from the Statutes themselves, to which recourse to be had.

From these Premises it plainly appears, That the *Supreme Power* is *solely* in the *King*; and, That the *Two Houses* of Parliament are (not Partners in the Government but) his most Dutiful and Loyal Subjects; as in all their *Petitions* most truly they do stile themselves. And that this *Form* in our Statutes, By the *Authority* of the same, when rightly understood, doth neither
give

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give them Title to make *Laws*, nor perform any other Act of Sovereignty, which may countenance this Fancy of a *Coordinate Power*.

The next Pretence of these *Republican Politicians* (which I find they often urge in vindication of the late *Rebellion*) is this; *That the King is One of the Three Estates*; and from thence they infer: He hath but *One* share in the Government; and that the other *Two* are Co-partners with Him.

The which *Suggestion* being apparently *False*, I shall need to say the less in its *Confutation*, especially being so happily prevented by a late Learned Hand, viz. *The Grand Question concerning the Bishops Right, &c.*

The judicious Author of which *Treatise* having first premised;

That the *whole Parliament* assembled, are the best Judges, which are the *Three Estates in Parliament*; and that their Authority is more to be valued, than that of any particular Persons, whether *Lawyers* or others; He then, in many Instances, informs us from the *Parliament Rolls* and publick

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publick Records of the Kingdom; That the Three Estates are the Lords Spiritual, the Lords Temporal and the Commons.

In these Records we read of Impeach- R. 2.
ments made before the King, and all the
Estates of the Realm. Of Commissions
appointed by the Peers and Lords Spi- R. 2.
ritual and Temporal, and the Commons of
the Kingdom, representing all the States
of the Kingdom.

Of such and such things, advised and 6 H. 6.
appointed by the Authority of the King, as n. 24.
sentencing the Three Estates of this Realm.

The Duke of Bedford appear'd in Par- 11 H. 6.
liament before the King and the Three E. n. 10.
states of this Realm.

In the Parliament 1 H. 6. The Queen
Dowager, in her Petition, mentions the
Ratification made in Parliament, 9 H. 5. and
saith; It was not only sworn by the King,
but by the Three Estates of the Kingdom
of England, i.e. by the Prelates, Nobles
and other Grantees, and by the Commons
of the Realm of England.

And to add one Instance for latter times
in the Parl. 1 Eliz. cap. 3. The Lords Spiritu-
al, the Lords Temporal and the Commons declare,

D

That



That they do represent in Parliament the Three Estates of the Realm.

With several others which I shall not mention ; but refer all those , who either want or desire satisfaction , to the Book it self.

And as to my plain, honest Reader, who hath neither ability nor opportunity to consult these *Publick Records*, I shall desire him to open his *Common-Prayer-Book*; and to turn to the Office for the 5th. of *November*. In the Preface of which he thus reads, *A Form of Prayer with Thanksgiving--- for the happy Deliverance of the King, and the Three Estates of the Realm.* And in the Collect before the *Epistle*, We acknowledge the Power, Wisdom and Goodness of God , in preserving *the King, and the Three Estates of this Realm assembled in Parliament.*

It thus evidently appearing ; That the King is not One of the *Three Estates* , and consequently , that his Authority is not limited or restrain'd , by the Coordinate Power of the other *Two* ; we may with better assurance proceed to examin the Truth of their next Suggestion, viz. *That*
the

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the King of England is not an Absolute Monarch.

In which Inquiry, least I should diminish the Kings just Right and Prerogative on the one hand, or encroach upon the Subjects Freedom and Liberty on the other, I must neither affirm nor deny without due Distinction.

Now the Kings Power and Authority doth admit of a Twofold Consideration.

For, either we may observe it's efficient Cause, the Spring and Fountain from whence it flows; or else may take notice of the Execution and Administration of it.

As to the First of these;

If the Question should be asked; whence hath the King this Power to Rule and Govern these Nations? Who gave him this Authority?

To this a just Answer may be suggested from His Majesties Royal Motto; DIEU ET MON DROIT, God and my Birth-right have given me these Kingdoms.

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If it further be demanded, How Birth-right doth Entitle to a Crown? 'Tis then truly replied That it is a Fundamental Law of England, That the Crown doth descend to the next in Blood; England being not an Elective but an Hereditary Kingdom.

And from hence we are occasionally instructed, how to understand that Controverted Place in Bracton (which I therefore mention because I find it repeated with great Triumph in several Pamphlets) Lib. 1.c. *Lex facit Regem*; the Law makes the King; 7. f. 5. *The Law*, i.e. *The Law of Succession*. In and Lib. 3. c. 9. f. 107. which Sense doubtless my Lord Cook (as I have somewhere read) told King James, That the Law set the Crown upon his Head.

And it is the same Law that set the Crown upon the Head of His Present Majesty.

For though His Majesties personal Qualifications deserve a Crown; yet it was not any Acceptance or Consent of the People, express'd at his Coronation or otherwise, but it was his Birth-right only which made him King, because Son and Heir apparent of King Charles the First.

This is the full Import and Meaning of that saying of Bracton.

But

But now from hence to infer (as some canting Politicians have done) That because The Law, in this Sense as now explain'd, makes the King; therefore the Law is Superior to the King; therefore the Law hath a Coercive Power over the King; therefore, If the King shall neglect to Discharge his Trust, the Parliament of England (who are not only the highest Expounders, but the sole Makers of ^{Bradshaw's} the Law) can by that Law which made him ^{Hearings} King, ^{at the} censure and condemn him for his Neg- ^{Kings Try-} al.
lect. I say thus to infer, is not only false and explosive in it self; but Treasonable to the King, and Destructive to the Kingdom: But of this, God willing, more fully in it's proper Place.

It may suffice at present to observe, that the Crown of England is an Imperial Crown, i.e. Such a Crown which as to the Coercive part; is not subject to any human Tribunal or Judicature whatsoever, as most plainly appears from our Law-Books and Statutes.

It was asserted in our Laws in the Time of King Richard the Second, That the Crown ^{16 R. 2.} of England hath been so free at all times, ^{c. 5.} that it hath been in no EARTHLY SUBJECTION

TION BUT IMMEDIATELY SUBJECT TO GOD, in all things touching the Regalty of the same Crown, and to none other.

24 H. 8. And in 24 H. 8. it was declared in Parliament, *That this Realm of England is an Empire, and so hath been accepted in the World, govern'd by one Supreme Head and King, having the Dignity and Royal Estate of the Imperial Crown of the same; unto whom a Body Politick—of Spirituality and Temporality, been bounden and owen to bear NEXT TO GOD, a natural and humble Obedience.*

25 H. 8. And 25 H. 8. It is Declared; *That this Realm, recognizing NO SUPERIOR UNDER GOD, BUT ONLY THE KING, hath been, and is free from Subjection to any man's Laws, but only to such as have been debized within the same, V. 1 Eliz. cap. 3. & 1 Jac. c. 1. which are very pertinent to be perused, in confirmation of these preceding Statutes.*

And if private Authorities may not seem superfluous after the recital of such Authentick Records, I might largely confirm this Supreme Independent Power of the King, by the repeated Testimonies of our most eminent and noted Writers. But

But because I would not be too tedious, I shall mention none but the forecited *Bracton* Lord Chief Justice under *Henry* the 3^d. And I the rather take notice of *Him*, because some passages in his *Works* have been perverted and abused, by the *IGNORANCE* or *MALICE* of ill designing Men.

From this Learned and Judicious *Author* we are thus instructed.

(a) All Ranks and Degrees of Men are (a) *Om-*
subject to the King; but the King himself is *nis quidem*
under none but God. There is none equal to *sub eo, &*
him, or coordinate with him in the Kingdom; *ipse sub nul-*
such a fancy being wholly inconsistent with his *lo, nisi an-*
Kingly Power----- *rum sub*
(b) And if any Man *Deo. Pa-*
hath occasion to implead the King (since no Writ *rum autem*
can be taken out against him) he must then pro- *non habet in*
ceed by way of Petition. But if the King shall *Regno suo,*
still refuse to do him right, it will be sufficient *quia sic a-*
punishment for him to expect the Lord as an *mitteret*
Avenger. *preceptum.*

etiam abro-
petatur
(cum brevis
non curras
contra ip-
sum) locus
erit suppli-
cationi quod factum suum corrigat & emendet, quod quidem si non fecerit, satis suf-
ficiet ei ad penam quod Dominum expectet ultorem.

Nemo quidem de factis suis presumat disputare, multo fortius contra factum suum venire.

Vid *Bracton* de Leg. Ang. Lib. 1. cap. 8. Sect. 5. fol. 5.

Doublets

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Doubtless no man should presume to question the Kings Actions; much less to oppose them by force.

And in his 5th. Book de Defaltis Cap. 3. Sect. 3. he speaks the same Language.

For having put the Case, That if the King being Petition'd to redress the Grievances of his Subjects, should yet neglect to grant them Justice, what further course the Subject might take for his Relief? He Rules it thus.

(c) Quo (c) If the King, who is bound to admini-
casu cum ster Justice to his utmost Power, will not recal
Dominus Rex super the wrong he did upon a false Suggestion; in this
hoc fuerit case he injures his Subjects, but nobody can force
interpella- him to do Right; because he hath no Superior
tus, in ad- dem volun- but God only. And it is sufficient that we shall
tate quod velis te- mentem esse have a day of hearing hereafter at a Just Tri-
defensum cum inju- bunal.
ria, cum
scrutatur
Fustitiam
totis viri-
bus defensa-
re, ex
tunc erit

injuria ipsius Domini Regis, nec poterit ei iniquitatem aliquis imponere quod illam corrigat & emendet nisi velit, cum superiorem non habeat nisi Deum, & satis erit illi pro pena quod Deum expectet ultorem.

Bracton Lib. 5. de Defaltis c. 3. Sect. 3. fol. 368,

But

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But here I am Allarm'd with that noted saying of this Author; *Rex habet Superiorem, Deum & Legem etiam & Curiam.*

And there is scarce a Pamphlet, pretending either to Law or Latin, which doth not triumph in this Sentence of *Bracton*. I am therefore oblig'd, for their sakes who may otherwise be misguided, to endeavour the full Sence and Meaning of these Words.

Vid.
Sidney's
Tryal p.
23.

In order to which Task, and that he may the better apprehend the clearness of my Answer, I must trouble my Reader to peruse the whole Section.

De Chartis vero Regis & factis Regum, non debent nec possunt Justiciarii, nec privatae personae disputare; nec etiam si in illa dubitatio oriatur, possunt eam interpretari, & in dubiis & obscuris, vel si aliqua dictio duos contineat intellectus Domini Regis erit expectanda interpretatio & voluntas, cum ejus sit interpretari, cujus est concedere, & etiam si omnino sit falsa propter rasuram, vel quia forte signum appositum est adulterinum, melius & tutius est quod coram ipso Rege procedatur ad Judicium. Item nec factum Regis, nec chartam potest quis judicare, ita quod factum Domini Regis irretetur.

E

Sed

Sed dicere poterit quis, quod Rex Justitiam fecerit, & bene, & si hoc, eadem ratione quod male, & ita imponere ei quod injuriam emendet, ne incidat Rex & Justic. in Judicium viventis Dei propter injuriam. REX AUTEM HABET SUPERIOREM, DEUM. S. ITEM LEGEM, PER QUAM FACTUS EST REX. ITEM CURIAM SUAM, viz. Comites, Barones, quia Comites dicuntur, quasi socii Regis, & qui habet Socium, habet Magistrum, & ideo si Rex fuerit sine freno, i.e. sine Lege, debent ei frenum ponere, nisi ipsimet fuerint cum Rege sine freno, & tunc clamabunt subditi & dicent, Domine Ihesu Christe in chamo & freno maxillas eorum constringe, ad quos Dominus, Vocabo super eos gentem robustam & longinquam & ignotam, cujus linguam ignorabunt, quæ destruet eos, & evellat radices eorum de terra, & a talibus judicabuntur, quia subditos noluerunt juste judicare, & in fine, ligatis manibus & pedibus eorum, mittet eos in caminum ignis & tenebras exteriores, ubi erit fletus & stridor dentium. V. Lib. 2. c. 16. §. 3 fol. 34.

This is the whole Section, in which that controverted Passage, Rex habet Superiorem, &c. is contain'd.

Now

Now as preparatory to a just Explication, it will be pertinent to consider these *Two Things.*

First, That all difficult and obscure places in any Author, ought to be determined by such as are plain and obvious; but not *e converso*. And therefore,

Secondly, When we doubt of the true Sence of an Author, it is much more *modest* as well as *charitable*, to confess our own Ignorance, and to say, we do not know what he means, rather than to calumniate and mistake him, by affixing such a Sence to his Words as he never intended.

And consequently, it might be a sufficient *Answer* to affirm; That since our *Bracton* hath so plainly and so often told us; *That the King is under none but God. That all Orders and Degrees of Men are Subject to the King. That he hath no equal much less Superior. That no man should presume to question his Actions, &c.* It evidently follows;

That whatever can be understood by this *Curia* (whether *Lords* or *Commons*) yet this *Curia* is not Superior to the King: It neither gave him his Authority at *first*, nor hath the least shadow of a Coercive

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Power, to limit and restrain him. For certainly *that* cannot be the meaning of *Bracton*, which he hath so expressly contradicted in other parts of his *Works*.

But that I may *Answer* as well as *Evade*, I now come to explain, what I think to be the true Sence and Meaning of these Words, *Rex habet Superiorem, &c.*

The Subject matter of this *Second Book* of *BRACTON* is, *De acquirendo rerum Dominio*. It explains the nature of *Legal Titles*; and sets forth the several ways, by which a man may acquire such a Right and Property in the thing possess'd as to call it his *own*. And amongst many others, *DONATION* as being the chief, is more particularly consider'd by him.

Now these *Gifts* or *Grants* (as he tells us in the beginning of this 16 Chap. Sect. 1.) *fiunt in scriptis, sicut in Chartis, ad perpetuam memoriam, propter brevem hominum vitam, & ut facilius probari possit Donatio*. They are for Mortalities sake, put into Writing, that so the *Donee* (should his Title be question'd) by the Evidence of such enrolled Deeds, may secure his Possession.

Of these *Grants* or *Charters*, some are made.

made by the King; others by private Men. And having largely discours'd of these private Charters; Sect. 2. 4. and so on; in this intermediate 3d. Sect. he more particularly gives us his Judgment de Chartis Regiis; which by way of Eminency are stiled Charters.

De Chartis vero Regiis & factis Regum, non debent nec possunt Justiciarii, nec privata Personæ disputare: Neither the (a) Justiciarii nor private persons, have any Commission to dispute the Kings Charters; or to question any other of his Majesties Proceedings; nec etiam si in illa dubitatio oriatur, possunt eam interpretari: For where the Royal Grant is doubtful and obscure, it would be presumption in them to pretend to explain it. Et in dubiis & obscuris, vel si aliqua dictio duos contineat intellectus, Domini Regis erit expectanda Interpretatio & voluntas; cum ejus sit interpretari cujus est concedere.

(a) Who are here meant by these Justiciarii, let the learned in the Law determine.

But if any part of it be ambiguous, and doth admit of a double Sense, than the Kings pleasure (since His Majesty who first made the Grant best knows his own Mind) is the surest and most authentick Interpretation; *Et etiam si omnino sit falsa propter*

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propter rasuram, vel quia forte signum appositum est adulterinum, melius & tutius est quod coram ipso Rege procedatur ad Judicium.

Moreover should there be suspicion, that any Charter (either by erasing or corrupt Interpolation) hath been falsely transcribed, 'tis the best and safest course, to determine the matter before the King himself. *Item nec factum Regis, nec chartam potest quis judicare, ita quod factum Domini Regis irritetur.* However (as was said before) let no man presume to censure the Kings Charters, or any other of his Proceedings, so as to make null and void the Act and Deed of our Lord the King.

Sed dicere poterit quis, But here it may be Objected, quod Rex justitiam fecerit, & bene, If the King will do Justice, 'tis well; & si hoc eadem ratione quod male, & ita imponere ei quod injuriam emendet, ne incidat Rex & Justic. in judicium viventis Dei propter injuriam. and should he not do Justice, it seems that must be well taken too, since no body dares tell him that he doth amiss; and accordingly there will be none to admonish him to correct his fault, that so he may escape the Judgment of the living God.

To

To this Objection BRACTON returns an *Answer*, though indeed not ushered in with the usual Formality of a *Sic Respondeo*. And his Answer is this;

Rex autem habet Superiorem, &c.

'Tis true indeed, none can controule the Kings Person or censure his Actions (his Majesty being *Supream* over all Persons, and in all Causes) *autem*; but yet we have these encouraging Reasons, that the King will do Justice, and govern his People according to Right.

For 1. *Rex habet Superiorem, Deum, sc.* As high and as great as the King is, there is one higher and greater than he, even Almighty God; *The King of Kings and Lord of Lords*. It is therefore much hoped; that a due Sense of this dreadful Majesty (before whose Tribunal the greatest Monarchs as well as the meanest of their Subjects must one day appear) may over-awe and restrain the King from all unjust and injurious Proceedings.

2. *Item Legem per quam factus est Rex.* And moreover the better to enable the King to do Justice, there is a Law to direct him in his Interpretations, the which

Law

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Law his Majesty is obliged even in gratitude to observe, since it was the *Law* which made him King. (But how this must be understood is already explain'd.)

3. *Item, Curiam suam, viz. Comites, Barones*; but besides these *Two* preceding Considerations, there is a *Third* Expedient to restrain the King from all unjust and exorbitant Proceedings.

For, as there is a God in Heaven to overawe him; and as there is a Law on Earth to direct him: So likewise he hath his *Curia*, to admonish and advise him, viz. *Comites, Barones, quia Comites dicuntur quasi Socii Regis*; His Nobility, his Earls and his Barons; who by reason of their constant attendance at Court, are admitted into a nearer Familiarity with his Majesty, and are, as it were, the Kings Companions. *Et qui habet Socium, habet Magistrum*; and by such Intimacy as this, they are, in some sort, the Supervisors and Censors of his Actions; *Et ideo si Rex fuerit sine fratre, i.e. sine Lege, debent ei fratre ponere*. If therefore the King shall omit to observe the Laws; 'tis then their Duty to admonish him of his neglect; saying, SIR, This is
the

the Law, this should bridle you; this should limit and direct your Actions. And this doubtless they will do, *nisi ipsimet fuerint cum Rege sine freno*; unless they themselves have a mind to be lawless as well as the King.

But if matters should be brought to this pass, what shall then the poor Subjects do? how shall their Grievances be redress'd? Shall it not then be lawful to take up Arms (in the just Defence of King and Kingdom) to remove these evil Counsellors from the King? No such matter! *& tunc clamabunt subditi & dicent, Domine Iesu Christe, in chamo & freno maxillas eorum constringe*; Our honest *Bracton* allows the Subject no other Arms against his Sovereign, but the old *Primitive Artillery of Prayers and Tears*.

Ad quos Dominus, vocabo super eos gentem robustam & longinquam & ignotam, &c. And if the Subjects being under any Oppression, shall thus dutyfully refer their cause to God, he will then take Care to do them right; and will not only restrain, but also punish their Oppressors: As our Author more fully explains to the end of this 16.

F Section,

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Section, which I shall not need to translate any further, there being no difficulty in it.

If this *Paraphrastical* Translation (which I thought would most naturally lead us to the true sense of the words) doth not yet fully remove the Doubt; I shall then, for the Readers satisfaction, give this further Interpretation.

BRACTON in this 2d. Book. Chap. 16. §. 3. is discoursing (as I have already observed) *de Chartis Regiis*. And he tells us; that the Royal Charters, when either doubtful or obscure, are to be determined *coram Rege* i.e. in the Courts of *Kings-Bench* and *Chancery*. (For these being the *Kings own immediate personal Courts*, in one of which the *Kings of England* have formerly sat in Person, all *Writs* returnable there run in this Style, *coram nobis*; and all judicial Records there are stiled, and the *Pleas* there holden entered *Coram Rege*. And therefore this Phrase in BRACTON *Coram Rege* is, I think warrantably render'd, the Courts of *Kings-Bench* and *Chancery*.

Now if the *Plantiff* shall suspect, that the Proceedings in these Courts are not just and

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and equal, he may then make his *Appeal*. For the King hath not only *Legem*; his ordinary Courts of Justice, but also *Curiam suam*, (viz.) *Comites*, *Barones* His HOUSE OF LORDS. The Cause may then be removed by *Writ of Error*, or by *Appeal* into the *House of Lords*.

But if the Party shall still complain that he hath not Justice; there is then no other Remedy but *Prayers* and *Patience*.

For, this *House of Lords* being the Supreme and highest Court of *Judicature*, no Earthly Appeal can be made any further. *Sistendum est in aliquo*. In all Judicial Proceedings, *Ecclesiastical* and *Civil*, there must be a *non ultra*. For, as the *Law of Nature* doth instruct us, that *Appeals* must of necessity be allowed (otherwise those Injuries which may be occasion'd, through the Ignorance or Corruption of inferior Judges could never be redress'd) so the same Law doth also teach us; That *Appeals* must not be *Infinite*; i. e. There must be some *Supreme Power*, in whose final Determination (be it *right*, or be it *wrong*) all *Inferiors* must acquiesce and submit. Otherwise, no *Controversies* could be decided; nay,

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there could be no *Government*, nothing but Disorder and Confusion in the World.

These are my present Thoughts of this difficult Passage : And whether I have yet given it's proper Sence is humbly submitted to the Impartial Reader. But whether I have or have not ; the *Republican Objector* is again desired to take notice ;

That whatever else can be the meaning of these Words , yet our *Bracton* doth not affirm this *Curia* to be superior to the King ; Such an Interpretation being inconsistent with *Grammar* as well as *Loyalty*.

We have this Rule in our *Syntaxis* ; that, *If the Relative be referr'd to two Clauses or more, then the Relative shall be put in the Plural Number.*

If therefore this Relative word *Superior* do refer not only to *Deum* , but also to *Legem* and *Curiam*, it should not be *Superiorem* in the *Singular* , but *Superiores* in the *Plural*.

Bracton was not only very learned and judicious as to his Sence, but also (considering the Age he lived in, and the Subject he discours'd on) very polite and elegant as to his *Style* ; and consequently we must

not

not suppose him guilty of so gross a *Solacism*, which the meanest *School-Boy* is able to correct.

If the Patrons of the Faction, who are very hard to please, shall think fit to Reply; That it is a most unusual and Pedantick Method, to interpret a *Law-Maxim* by a Rule in *Grammar*; and thence are unalterably resolv'd to insist upon it; That unless we can explain, in what Sence this *Curia* is Superior to the King, all that hitherto hath been said on this occasion is trifling and explosive;

If, I say, these *Republicans* will not otherwise be contented, let them then take it thus. *Rex habet superiorem-----Curiam-----* i.e. The King can do more with the Advice and Assistance of his *Curia* then without it. Or more plainly thus. *The Kings of England have more Power and Capacity in Parliament, then out of Parliament.*

If this will not satisfy. *Cras respondebo.* For at present, I think fit to add no more in this matter.

This passage of *BRACON* (which hath given us so large a Digression) being thus dispatch'd; we shall now return to our former Discourse.

'Tis

'Tis undeniably evident from the Authentick Records of the Kingdom (not to mention private Authorities) *That the King of England hath no Superior but God. That His Majesty did not receive his Authority from any Earthly Power. That he is not Fæudatory, either to the Pope or any other Foreign Prince, much less to his own People. That he was not admitted to his Kingdoms with any Limitations or Conditions; As the Kings of Poland and some others are. And consequently, since the Terms Absolute and Conditional are opposite and contradistinct; If the Kings Power and Authority (with respect to its Original Efficient Cause) be neither Conditional nor Dependent, it is then Absolute as well as Independent. And therefore we may safely conclude (in this sence as now explained) The King of England is an absolute Monarch.*

But here I expect it will be reply'd (and 'tis a very Popular Objection.)

That the *Coronation Oath*, in which there is a plain *Contract and Bargain* between the *King* and his *People*, doth sufficiently intimate; That the *Crown* is *Conditional, i. e.* was conferr'd upon his Majesty with certain

tain Limitations and Conditions. For, the King having promised, **to keep and defend the Laws and rightful Customs of the Kingdom**, &c. He is then publickly shew'd to the People; and their *consent* to his Coronation being first demanded; he is, by that solemn Action, accepted as their King. Plainly insinuating, that without such a Promise on *his* part, he would not have been accepted on *theirs*. And from hence Mr. SIDNEY (a very Authentick Author with some men) doth infer; That there is a mutual Compact between the King and his *Subjects*; and if the King doth not perform his Duty, the *Subjects* are discharg'd from *theirs*. His words are these, *That those Laws were to be observ'd, and the Oaths taken by them, having the Force of a Contract between Magistrate and People, could not be violated without danger of dissolving the whole Fabrick: Which in plain English is this: If the King breaks his Oath, and doth not govern according to Law; he then forfeits his Crown, and the People are absolved from their Obedience.*

In Answer to which, we are to take notice;

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tice ; that this plausible *Objection* is raised upon a false Foundation, viz. That the Coronation Oath makes the King ; which is a most gross as well as dangerous Mistake ; the King being as perfect and compleatly King before his Coronation as after.

'Tis a Maxim in our Law , The King never dyes : There being no such thing here in England as an *Interregnum*. For the very same moment that the *Predecessor* deceaseth, the Rights of Majesty descend and fall upon the *Successor*. And herein I am instructed by those eminent *Lawyers*, the Lord Chancellor Egerton, and Sir Edw. Coke. By the former thus,

L.Chanc.
Egerton
Postnat.
p 73.

The Sovereignty is in the Person of the King, the Crown is but an Ensign of Sovereignty. The Investure and Coronation are but Ceremonies of Honour and Majesty. The King is an absolute and perfect King before he be Crowned, and without those Ceremonies.

By the latter in these Words : If the Cooks Crown descend to the rightful Heir , he is Rex before Coronation. For by the Law of England there is no interregnum : and Coronation is but an Ornament or Solemnity of Honour. And so it was resolv'd by all the Judges, Hil. 1. Jac. in the Case

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Case of Watſon and Clark Seminary Priests :
For by the Law there is always a King, in whose
name the Laws are to be maintain'd and executed,
otherwise Justice should fail. Thus he,

But that I may effectually convince our
Associators of their mistake in this matter, I
thus argue *ad hominem*.

Was his present Majesty actually King (i.
e. King *de facto* as well as *de jure*) before
his Coronation, or was he not ?

If they acknowledg that he *was*; the
Cause is then decided. But if they say he
was *not*; I must then remind them of ano-
ther point of Law, laid down by that O-
racle of the Law in the preceding words, a
Pardon granted by a King *de jure*, that is not
also de facto is void. Now when they have
first consider'd; That the Act of Oblivion
was made before the King was Crown'd, I
shall then leave it to themselves to deter-
mine the Case.

Doubtless upon second Thoughts which
are usually the best, they will readily con-
fess; That his present Majesty was actually
King before his Coronation; and consequen-
tly, That the Oath which he then took, was
not any Condition preparatory to his admit-
tance to the Kingly Power. G Co-

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Coronation then is but a Ceremony, and no part of his Title : I say, it is but a Ceremony ; and yet (that I may remove some impertinent Scruples against it) it is no trifling, insignificant Ceremony : For,

First, The solemn Splendor in which the King appears in that Action (the generality of People being much affected with outward Pomp) doth naturally make Impressions of awe and reverence towards his Person.

Secondly, The Oath which he then takes, may expel all jealous Fears ; disposing his Subjects chearfully to submit to his future Government. For when the King (who is not responsible to them for any of his Actions) shall condescend thus publickly to promise his People, in the Presence of that God who gave him his Trust (and to whom alone he must render an Account for the management of it) That he will govern his Subjects according to Law ; That he will preserve Religion from Heresy and Schism ; defend their Persons from wrong and violence ; secure their Estates from Fraud and Rapine : Such assurance as this, must Needs enlarge their Affecti-

ons

ons to their Prince ; make their submission more hearty ; their Obedience more chearful , since under his Government (if it is not their own Fault) they may rationally expect to live a quiet and peaceable Life in all *Godliness and Honesty.*

It appears, I hope, from these Premises (notwithstanding this or any other Objection to the contrary) That the Kings Power , in respect of it's Original, is *Absolute*, i.e. He received it from none but God. Neither from the *Pope*, nor any other *Foreign Prince* , much less from his own People.

But now when we speak of the Kings Authority , with respect to the *Execution* and *Administration* of it , the Case is very different. For the Kings of *England*, out of their abundant Grace and Favour, and to make their *Government* more easie and acceptable to their Subjects, have suffer'd themselves to be so limited in the *Exercise* of their Power ; That they can neither make *Laws*, nor raise *Taxes* but in *Parliament* ; much less can they pretend to take away the *Life*, or dispose of the *Estate* of the meanest of their Subjects but by due

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course of *Law*: And therefore in this second Consideration of his Authority, viz. the *Execution* and *Administration* of it; *The King of England is not an Absolute but a limited Monarch.*

And indeed, if these *Republicans* were not much more forward, to remind the *King* of his Duty than to discharge their own, these things did not need to be repeated. For the *King* hath very often most graciously promised; That he will govern by, and according to, the *Laws* of the *Land* and not otherwise: And that he will use the *Power*, *Trust* and *Office* committed to him, for the good and benefit of the *People*, and for the preservation of their *Rights* and *Liberties*. All this is readily granted, in the very words of the *Objectors*.

Only this Phrase, *That he will govern according to the Laws, and not otherwise* for the avoiding of mistakes, must be a little explained.

There are some Men, either through Ignorance or Malice, who have fancied; because the *King* is obliged to govern by *Law*, that therefore he must always acc-

accord-

according to the Letter of it : So as that it shall not be in his Power, for instance (especially when it is their Interest to restrain him) either to Pardon Capital Offenders ; to Change the manner of their Death ; or to mitigate the rigour of the Law on any other occasion. And, in fine, these confident Reformers (who trade in Post-scripts more than Bracton) do talk of the Kings Prerogative at such a rate ; as if it were an Arbitrary, Illegal Encroachment ; and are so extravagant as to fancy ; That by diminishing the Kings Prerogative, they advance the Laws ; and that to oppose the King, is to defend the Kingdom.

In charity therefore to these men, and to rectify their mistakes , I shall briefly lay down the nature of the Kings Prerogative : What it is ? how it comes to be established ? And whether, as is pretended, it be destructive to the Liberty of the Subject.

The Word (a) Prerogative (to omit other Significations Foreign to our purpose) doth properly denote ; some special peculiar Priviledg or Preheminence, granted by Law. Hence the Kings Prerogative is very fitly styled.

(a) Ju-
reconf. hae
voce varia
utuntur :
modo pro
autoritate
et eminen-
tia: quadam
modo pro
jure quo-
dam prae-
cipuo, specia-
li seu privi-
legio, Gal.
Lex Jurid.
verb Pra-
rogat.

(b) *Spelm.*
*Gloss.**Prærog.**verb.*(c) *1 Instit.**cap. 5. sect.*

125. p. 90.

styled by Sir H. (b) SPELMAN, *Lex Regia Dignitatis*, which in (c) Sir Edm. Cooks words may be thus Translated. The Royal Prerogative legally extends to all Powers, Preeminences and Priviledges, which the Law giveth to the Crown. And Littleton, saith our Author, speaketh of the Kings Prerogative but twice in all his Books, viz. §. 125 & 128. and in both places as part of the Laws of England.

From whence our new Politicians may please to oblerve. That the Kings Prerogative is established by Law; and his Majesty hath as good Law for his Royal Prerogatives. viz. The descent of the Crown to the next in Blood: The Power of Calling and Dissolving Parliaments: The Negative Voice: The Power of the Militia: Pardoning Offenders, &c. I say His Majesty hath as good Law for these and all other his Prerogatives, as any Subject hath for his Paternal Estate.

Whoever therefore shall presume to dispute these Priviledges of the Crown, he must not think me uncharitable whilst I tell him, He is an Enemy to the fundamental Laws of England, and a Betrayer of the Rights of the Kingdom.

If

If the Case be thus, may some say; If these Royal Prerogatives are so sacred as not to be touch'd; it would then be a very suitable undertaking to enlarge your, &c. and to acquaint us more distinctly what they are, and where we may find them.

In answer to which Demand we are thus instructed by that Loyal Judge JENKINS, (a) *The Kings Prerogative and the Subjects Liberty are determined and bounded, and admeasured by the written Law what they are.* We do not hold the King to have any more Power, neither doth his Majesty claim any other but what the Law gives him. (a) Fenk. Rediv. p. 136.

The right method therefore to be inform'd in this matter, is to search the written Laws, with the learned Interpretations upon them. For though these Statutes are not Constitutive of the Royal Prerogatives (All (b) Kings had them; the said Powers have no beginning; i.e. They are so antient we cannot trace their Original) yet they are Declaratory of them. (b) Fenk. Rediv. p. 4.

I say, though these Priviledges of the Crown are most of them antecedent to our Acts of Parliament, and the written determined Cases of our Laws (and consequent-

ly.

ly are not primarily established by them) yet they are so often either explained, confirm'd, or otherwise there mention'd; that he who is conversant in those publick Writings must needs know what they are?

But since every one hath not the *Leisure* or the *Ability* for so laborious a Task; those therefore who shall desire *Compendio sapere*, they may please to peruse a little Treatise called *Jura Coronæ*; or *His Majesties Royal Rights and Prerogatives Asserted*. And amongst several others there mentioned and explained, they will find this Prerogative.

(a) *Jur. Coron. p.* 84. That the King hath Power, in many cases, to Dispense with the Laws: And that no (a) *Act of Parliament* can bind the King from any Prerogative, that is solely and inseparably annex to his Sacred Person and Royal Power; but that he may dispense with it by a non obstante.

The Reason of which Prerogative (which to some unthinking Men may seem extravagant) is plainly this.

All human Constitutions are liable to Defects: And there was never any Law yet framed with such Policy and Skill, which might not, on some occasion or other, be burthensome to the Subject. For particular Cases

Cases and Contingencies are so infinitely various, that it is impossible for *human* Wisdom to foresee or prevent them.

And therefore it is absolutely necessary ; That there should in all Governments be some Power, Superior and Paramount to the written Laws : By whose Authority the Subject might be reliev'd and pardon'd ; when the nice and strict Observance of the Law (through some unexpected Event) might be grievous to *himself*, or destructive to the Publick. And (b) this Power of dispensing with particular Laws (as the learned Bishop Sander-^{Sander-sons} informs us) is such a Pre-rogative, as without which no Commonwealth can be well govern'd ; but Justice would be turn'd into Gall and Wormwood : Nor can the Supream Governor, without Forfeiture of that Faithfulness which he oweth to the Publick-Weal divest himself thereof.

If some Men (who are very unwilling to give the King his Due) are still dissatisfied in the point ; the present posture of Affairs here in England may then fully convince them.

We all know that according to the Law High-Treason is punishable with
H Death.

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Death. And the Judgment of the Court, on such occasions, is to be *Hang'd, Drawn and Quarter'd*. This is Law. Let me therefore ask these Men. Can the King by his *Prerogative* dispense with this Law, so as to free the *Criminal* from the Punishment (*a Toto* or *a Tanto*) or can he not? If they say not. *Ipsi viderint*. Let them look to that who are most deeply concern'd.

But if now at the last they are grown so considerate, as to say that he *can*: Give me leave then to expostulate with them, concerning that late Instance of the unfortunate Lord Stafford.

When his *Majesty*, out of Compassion to that *Nobleman's* Person and respect to his *Quality*, had changed the manner of his Death, and given him the favour to be Beheaded: What a noise was then raised, That the Law must be observ'd? What Fears and Apprehensions of *Arbitrary Power*? What a Tumult did those scrupulous *Sheriffs* make on that occasion, by Petitioning the *Two Houses*; Whether the Kings *Writ* ought to be obey'd? But what Answer they receiv'd both from *Lords* and *Commons* is sufficiently known.

I shall make no *Reflections* upon it, tho indeed the Impertinence of that Action (in which I doubt they were encourag'd by some greater than themselves) might deserve a *Remark*.

From these Premises it is evident, That there is *Lex Corona*, a Royal Prerogative granted by the Common Law to the Crown of *England*, Superior to all written Laws. By virtue of which *Prerogative-Law*, the King hath Authority (on emergent occasions, and when such *Dispensation* may promote the ends of Government) to *Dispense* with most Statutes or Acts of Parliament. *Salus populi suprema Lex esto*; when rightly understood is a full proof of this Assertion.

As therefore on the one hand;

When *Sedition* is rampant, and *affronts* the Government; when the *Mercy* of a King shall be voted his *weakness*; and his Royal compassion and unwillingness to *Punish*, shall have this Gloss put upon it; *He dares not do it*.

As in such a Case, Reason of State (which is *Salus Populi*) doth require; That some should be executed *in terrorem*; to re-

press the insolence of others ; So on the other hand,

When Tumults are abated ; when Faction is broken, and that Men begin to acknowledge their Mistakes , and return to their Wits : If under such inviting Circumstances as these, the King out of his Grace and Mercy , shall either Pardon a Traitor, or abate the *rigour* of his Sentence, who will pretend to say, that such undeserved Favour is *Illegal* ? Or that the King, whether he pardon or punish, doth not govern, in both Instances, according to Law ?

The Objectors go on.

If the King thus entrusted to keep the Laws and preserve Religion, should be guilty of a wicked Design, to subvert our Laws, and destroy our Religion, by introducing an Arbitrary, Tyrannical Government ; he must then understand, that he is but an Officer of Trust.

All this is granted ; If the word **Trust** do only refer to *Almighty God*, but not to the People.

The King doth chearfully acknowledge, that he is *Authoriz'd* and Deputed by the most High, to govern these Nations ; and that he must render an Account for so great

great a Trust committed to his charge. And though the King hath many Enemies, both *Spiritual* and *Temporal*, yet his Support is this. He who gave him his *Commission* is able to Protect him. He hath hitherto very signally preserv'd him. And it is the constant, hearty Prayer of all Loyal Subjects; That his God, and the God of his *Fathers* will preserve him still. His Majesty hath indeed many *Enemies* (and good Princes did never want them) but in the *Mercy* of the most High he shall not miscarry.

But if this **Trust** do refer to the *People*, as if the Kings Power and Authority were derived to him from the *People* by way of *Pact* or *Contract*: Let them then explain, Who are this *People*, with whom he did thus *Contract*? When was this Bargain made? What are the Conditions? Before what Witnesses? Who must Judge of the Delinquency? Where are the Records of these Transactions to be perused?

If no Evidence to confirm any of these Instances; the Case is then decided by that known Maxim, *Idem est non esse & non apparere*. This *Fundamental Contract of the Nation*, is only a hard Word to amuse the vulgar

vulgar. We know not *what* it is, nor *where* to find it.

But it follows in the Objection.

The Parliament of England (the Representatives of the People, in whom all Power doth Originally reside) they are to take Order for the Animadversion and Punishment of such an Offending Governour. Parliaments were ordain'd to restrain the exorbitant Power of Kings and to redress the Grievances of the People.

The Sum of which charge is this.

There is a Coercive Power over the King. Which Power (Mr. SIDNEY tells us) Originally in the People of England, is delegated unto the Parliament.

Sidney's
Tryal.p.
23.

To which I do thus Answer.

That though his Majesty hath a just esteem for Parliaments; and thinks the Parliament of England the happiest Constitution that ever Nation did enjoy; and hath graciously assn'd us; That no Irregularities of Parliaments, shall make him out of Love with Parliaments; but that he will have frequent Parliaments: Yet such an extravagant Power of Parliaments as is here pretended, is such height of Treason; as deserves a sharper Confutation than can be given it from this Treatise.

As

As to the point of *Non-Resistance* (most reasonable to be enforc'd at this time) I did once design very fully to have enlarg'd upon it. To have shew'd its Obligation from all *Laws Natural, Positive, Divine, Human*. As also to have Answer'd the most Popular *Pleas* for such *Resistance*. But I am so happily prevented by the Learned Labours of others (particularly my Lord *Bishop of Winchester*, Dr. *Falkner* and Dr. *Sherlock*; who have indeed exhausted that Subject) that I shall give no further trouble; but conclude my short Discourse with this following Argument.

*The Supream Power must not be resisted ;
But the King of England hath Supreme Power ;
Therefore His Majesty cannot lawfully be resisted.*

The Proposition is the voice of Nature. There can be no Order nor Government, unless this Truth be admitted. Reason tells us; *Par in parem non habet potestatem*, much less hath an Inferior a Coercive Power over his Superior.

To which let me observe; That even the late *Rebels* themselves were convinc'd in this matter. For, to vindicate their former *Treasons*, and to patronize their intended

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ded Murder of that Blessed Prince, they voted, Jan. 4. 1648. Resolv'd, *That the People are (under God) the Original of all just Powers. That the Commons of England Assembled in Parliament, being chosen by, and representing the People, have the Supreme Power in the Nation. That whatsoever is Enacted or declared for Law by the Commons in Parliament hath the Force of a Law, and the People concluded thereby, though consent of King and Peers be not had thereunto.*

Plainly insinuating, That whilst the Subjects of England, according to their Duty, did acknowledg the Supreme Power to be in the King, they must needs apprehend, That the War was Rebellion; and his pretended Judges were Traitors.

And as to the *Assumption*, viz.

That the King of England hath Supreme Power; this, I hope, hath been so fully prov'd in this little Treatise, that I might suppose the Conclusion without any further Enlargement.

But because some late Seditious Pamphlets have very impertinently advanc'd the Power of Parliaments; I shall, *ex abundanti*, thus undeniably convince them, *That the Parliament of England is Subject to the King.* Mr.

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Mr. SIDNEY Informs us, *That the Right and Power of Magistrates in every Country, is that which the Laws of that Country make it to be.* If therefore it do appear by the Laws and Statutes of the Kingdom, That the Parliament of England is Subject to the King, then the Controversy is at an End.

*Sidney's
Paper p.
2.*

For Proof of this, they are desired to Consult, 12 Car.2.c.30. Where the Lords and Commons thus Petitioned to his Majesty.

We your Majesties said Dutiful and Loyal Subjects, the Lords and Commons in Parliament Assembled, do beseech your most Excellent Majesty that it may be Declared; That by the undoubted and fundamental Laws of this Kingdom, neither the Peers of this Realm, nor the Commons, nor both together in Parliament, nor the People Collectively or Representatively, nor any other Persons whatsoever ever had, have, hath or ought to have any Coercive Power over the Persons of the Kings of this Realm.

Words so plain and undeniably evident that they are not capable of any further Explication.

Only it will be pertinent to observe Two Things.

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First, the Lords and Commons do not here petition, that it may be *Enacted*, but that it may be *Declared*; intimating that the Kings Supremacy was not *first* establish'd in this Statute (as if before the making of this *Act*, the Parliament had been Superior to the King) but is here only *Declared* to have been *Establish'd* by the undoubted Fundamental Laws of this Kingdom; *i.e.* by such Laws as are the Foundation of the Government. Whoever therefore shall *Affirm*, That the Parliament hath a Coercive Power over the Person of the King, he alters the *Foundation* and *destroys* the Government.

Secondly, I do from this Statute observe, That their famous Axiom, *major singulis, minor universis*, will no longer support their Cause, it being plain from this *Act*; That the King is *major universis* as well as *singulis*.

When our *Republican Clubs*, who talk so much of *Law*, shall have answer'd this Statute; they may then expect to hear further from me.

In *th'interim*, I shall recommend a *Text*, to be held forth in all their *Conventicles*, the
next.

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next time of their meeting.

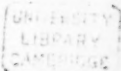
PROV. 24. 21, 22. *My Son, fear thou the Lord and the King, and meddle not with them that are given to change.*

For their Calamity shall rise suddainly, and who knoweth the ruin of them both?

From whence may be raised these
good Obversations, viz.

Honesty is the best Policy,
and
Loyalty the best Religion.

FINIS.



THE PARALLEL.

DOLEMEN

BRADSHAW

SIDNEY

and other of

The True-Protestant Party.

THERE can be no doubt but that the *Common-Wealth* hath Power to *chuse their own fashion of Government*, as also to *change* the same upon reasonable Causes. In like manner is it evident, that as the *Common-Wealth* hath this Authority to *chuse* and *change* her Government, so hath she also to *limit* the same with what *Laws and Conditions* she pleaseth. *Conference about Succession*. Part. 1. cap. 1. pag. 12, 13.

All Law, both Natural, National and Positive doth teach us; That Princes are subject to Law and Order, and that the *Common-Wealth* which gave them their Authority for the Common good of all, may also *restrain* or *take the same away again*, if they abuse it to the Common-evil. The whole Body, though it be governed by the Prince, as by the Head, yet is it not Inferior but *Superior* to the Prince. Neither so giveth the *Common-wealth* her Authority and Power up to any Prince, that she *depriveth* her self utterly of the same, when need shall require, to use it for her defence, for which she gave it. Part. 1st. cap. 4. p. 72.

And finally the Power and Authority which the Prince hath from the *Common-wealth* is in very Truth, not *Absolute* but *Potestas vicaria & delegata*, i.e. a Power *Delegate*, or Power by *Commission* from the *Common-Wealth*, which is given with such *Restrictions, Cautels and Conditions*, yea with such plain *Exceptions, Promises and Oaths* of both Parties (I mean between the *King* and *Common-wealth*, at the day of his *Admission* or *Coronation*) as if the same be not kept but wilfully *broken on either Part*, then is the other not bound to observe his *Promise* neither, though never so solemnly made or sworn. Part 1st. cap. 4. pag. 73.

By this then you see the ground whereon dependeth the righteous and lawful *Deposition* and *Chastisement* of wicked Princes, viz: *Their failing in their Oath and Promises, which they made at their first entrance*—Then is the *Common-wealth* not only free from all *Oaths* made by her of *Obedience or Allegiance* to such *unworthy Princes*, but is bound moreover for saving the whole Body, to *resist, chasten, or remove* such evil Heads, if she be able, for that otherwise all would come to *Destruction, Ruine and publick Desolation*. part 1. cap. 4. pag. 77, 78.

THE People of England, as they are those that at the first (as other Countries have done) did *chuse to themselves this form of Government* even for Justice sake, that Justice might be administered, that Peace might be preserved; so Sir, they gave *Laws to their Governours*, according to which they should Govern; and if those Laws should have prov'd inconvenient or prejudicial to the publick, they had a Power in them, and reserved to themselves to alter as they shall see cause. *Kings Trial* p. 64.

CHARLES STUART King of England; The Commons of England Assembled in Parliament, according to the *fundamental Power that rests in themselves*, have resolved to bring you to *Trial and Judgment*. p. 29. If so be the King will go contrary to the end of his Government, Sir he must understand that he is but an *Officer of Trust*, and he ought to discharge that Trust, and they are to take Order for the *Animadversion and Punishment* of such an *Offending Gover-* p. 65.

Sir, Parliaments were ordained for that purpose, to redress the *Grievances* of the People. And then, Sir, the *Scripture* says, *Thy that know their Masters will and do it not*, what follows? *The Law is your Master, the Acts of Parliament*. pag. 66, 67.

This we know to be Law, *Rex habet superiorem, Deum & Legem, etiam & Curiam*, and so says the same Author; and truly Sir, he makes bold to go a little further, *Debent ei ponere frantum, They ought to bridle him*. pag. 65.

That the said Charles Stuart being admitted King of England, and therein trusted with a *limited Power*. *Id. Char. p. 30*.

The House of Commons, the *Supream Authority and Jurisdiction* of the Kingdom. pag. 48. Which Authority requires you, in the name of the *People of England*, of which you are *Elected King*, to answer them, pag. 36. Sir you may not Demur the *Jurisdiction* of the Court—they sit here by the Authority of the *Commons of England*; and all your *Predecessors* and you are *responsible to them*. pag. 44.

For there is a *Contract and Bargain* between the *King* and his *People*, and your Oath is taken, and certainly Sir, the Bond is reciprocal.—Sir, if this Bond be once broken, farewell *Sovereignty*. pag. 72.

Sir, though you have it by *Inheritance* in the way that is spoken of, yet it must not be denied that your Office was an Office of *Trust*: Now Sir, if it be an Office of *Inheritance*, as you speak of your *Title by Descent*, let all men know that great Offices are *seizable and forfeitable*, as if you had it but for a year and for your *Life*, p. 73.

And Sir, the People of England cannot be so far wanting to themselves, which God having dealt so miraculously and gloriously for, they having *Power in their hands*, and their *Great Enemy*, they must proceed to do *Justice* to themselves and to *You*. p. 75.

GOD hath left Nations unto the Liberty of setting up such Governments as best pleased themselves.

The Right and Power of Magistrates in every Country, was that which the *Laws* of that Country made it to be, *Sidn. Pap. p. 2*.

St. Peter 1 Pet. 2: 13, 14. files *Kings*, as well as the Governours under him, the *Ordinance of Man*, which cannot have any other Sence, but that *Men make them and give them their Powers*. *Hunts postsc. p. 37*. By all which it is evident; That the *Succession to the Crown is the Peoples Right*. And though the Succession to the Crown is *Hereditary*, because the People so appointed it; would have it so, or consented to have it so; yet in a particular Case for the saving the Nation, *The whole Line and Monarchy* it self may be altered, by the unlimited Power of the *Legislative Authority*. *Hunts Postsc. pag. 43*. Some Men will talk as if they believed themselves, *That the Legislative Power is in the King*, when no King of England yet ever pretended to it. A *Legislative Authority* is necessary to every Government, and therefore we ought not to want it, and therefore *Parliaments*, in which our Government hath placed the making of *Laws*, cannot be long discontinued. *Hunts Postsc. p. 28*.

BRACON faith that the King hath three Superiors, to wit, *Deum, Legem & Parlamentum*; that is, the Power Originally in the People of England is Delegated unto the *Parliament*. *Sidn. Trial p. 23*.

All Government is founded in *Trust*, and settled in such a Person, or limited to such a *Family*, for the safety and advantage of the People, as well as of the Ruler.

It is remarkable that there was never a Conveyance of the Crown of England to any Person, but upon the *tacit Concurrence*, and with the *virtual or Implicite Consent* of the People. And therefore anciently before an King of England was actually *Crown'd*, the People being first acquainted with the Day appointed for that *Solemnity*, were three several times publicly asked, whether they would have such a Person to rule over them. *Let. from Gentl. in the City concerning D. Y. pag. 13, 14*.

Those Laws were to be observ'd, and the Oaths taken by them, having the force of a *Contract* between Magistrate and People, could not be violated without danger of dissolving the whole *Fabrick*. *Sidn. Pap. pag. 2*.

If he doth not like his condition, he may *Renounce* the Crown; but if he receive it upon that Condition (as all *Magistrates* do the Power they receive) and swear to perform it, he must expect that the performance will be exacted, or revenge taken by those he hath betrayed. *Sid. Try. p. 23*.

I will hope there are very few in this Nation so ill instructed, that do not think it in the Power of the People to depose a Prince, who really undertakes to alienate his Kingdom, or that really Acts the *Destruction* or the *Universal Calamity* of his People. *Great consid. relating to D. Y. consider'd p. 6*.

To give every one his due, is to administer Defence to the Innocent, and by Authority of Law to subdue the Aggressors of Mankind, how great and mighty soever they be, *Fiat justitia* therefore. *Id. Pag. 16*.